

In the Matter of the Petition of)
PRIMUS TELECOMMUNICATIONS, INC.)
For Approval to Participate)
In Financing Arrangements.)
_____)

Commission State of Hawaii.
R. H. H. H.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
PRIMUS TELECOMMUNICATIONS, INC.)	Docket No. 01-0050
For Approval to Participate)	
In Financing Arrangements.)	Decision and Order No. 19083
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DECISION AND ORDER

I.

By petition filed on February 22, 2001, PRIMUS TELECOMMUNICATIONS, INC. (Petitioner or Primus) requests commission approval to enter into financing arrangements that would allow Petitioner to borrow an aggregate principal amount totaling \$75 million. Petitioner's request is made pursuant to Hawaii Revised Statutes (HRS) § 269-17.

Petitioner served a copy of the petition on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate). By statement of position submitted on September 12, 2001, the Consumer Advocate states that it does not object to Primus' request to enter into the proposed financing arrangements and pledge its assets as security for the financing arrangements on the condition that: (1) Petitioner submits a copy of the loan documents for commission and Consumer Advocate review, pursuant to Hawaii Administrative Rules (HAR) §§ 6-61-101(b)(2) and 6-61-105(c)(2);

and (2) Petitioner revises its tariff, in accordance with Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189 (Decision and Order No. 17664).¹

II.

A.

Petitioner is a Delaware corporation with principal offices located in McLean, Virginia. It is a wholly owned subsidiary of Primus Telecommunications Group, Inc.² Petitioner is authorized to provide resold telecommunications services in Hawaii pursuant to Decision and Order No. 17664. It is authorized to provide telecommunications services in 48 other states and is authorized by the Federal Communications Commission to provide interstate and international services as a non-dominant carrier.

Under the initial proposed financing arrangement, Petitioner will borrow funds under an agreement with NTFC Capital Corporation (NTFC) in an aggregate amount of up to \$15 million. Petitioner will issue notes for the borrowed amount, plus accrued interest. The notes will have a maturity date of five years

¹In Decision and Order No. 17664, the commission, among other things, granted approval of the *nunc pro tunc* transfer of assets from Telegroup, Inc. to Primus and granted Primus a certificate of authority to operate as a reseller of intrastate telecommunications services in Hawaii. The commission also ordered Primus to file a revised tariff in accordance with the tariff revisions set forth in Decision and Order No. 17664. Primus has failed to file its revised tariff.

²Primus Telecommunications Group, Inc. is not authorized to provide telecommunications services in Hawaii or any other jurisdiction.

after the date of each loan. Financing will be secured by a continuing interest in all of Petitioner's right, title, and interest in the property financed by the proposed financing arrangement.

In addition, Petitioner expects to enter into similar financing arrangements in the next year in an amount totaling \$75 million, including the NTFC financing. Petitioner states that these financing arrangements will be similar to that described above.

Proceeds of the loans may only be used for the purchase of telecommunications equipment and associated software sub-licenses from Nortel Networks Corporation (Nortel), or another approved vendor, pursuant to purchase agreements made by and between Nortel, or another approved vendor, and Primus for installation in the United States and abroad.

B.

Petitioner asserts that its participation in the proposed financing arrangements, described above, will serve the public interest by allowing it to strengthen its competitive position with greater financial resources. Petitioner plans to use the proceeds of the loans to expand and develop its network and operations and to make capital expenditures necessary to execute Petitioner's business plan.

III.

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months. The statute limits the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property, building or construction, or improving the utility's capital facilities or services. HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property.

HRS § 269-16.9 permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Additionally, HAR § 6-80-135 permits the commission to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that an exemption or waiver is in the public interest.

Upon a review of the record, we find that the proposed financial arrangements, described in the petition, fall under the purview of HRS §§ 269-17 and 269-19. However, we note, at this time, that the telecommunications services currently provided by Petitioner are fully competitive, that Petitioner is a non-dominant carrier in Hawaii, and that the proceeds of the

proposed financing arrangements will be used to strengthen Petitioner's position in the competitive telecommunications market. Thus, based on the above, and other considerations set forth in the petition, we find that the proposed financing arrangements are consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation.

The commission, therefore, concludes that the applicable requirements of HRS §§ 269-17 and 269-19 should be waived with regards to the matters in this docket.³ For informational and tracking purposes, however, we find the Consumer Advocate's recommendation to require Petitioner to file a copy of the loan documents with the commission and Consumer Advocate to be reasonable.

Accordingly, we also conclude that Petitioner's request for approval to participate in the proposed financing arrangements, whereby it will borrow funds of up to \$75 million, with Petitioner granting as security an interest in and to all of Petitioner's right, title and interest in the property financed by the proposed arrangement, to be unnecessary at this time, with

³The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Petitioner's instant petition only. Thus, our waiver in this instance of the applicability of HRS §§ 269-17 and 269-19 should not be construed by any public utility, including Petitioner, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

regard to the matters in this docket. We also conclude that Petitioner should be required to file a copy of the loan documents with the commission and Consumer Advocate, and, in accordance with Decision and Order No. 17664, file a copy of its revised tariff with the commission.

IV.

THE COMMISSION ORDERS:

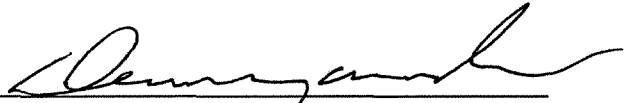
1. The provisions of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the proposed financing arrangements, described in Primus' petition, filed on February 22, 2001.

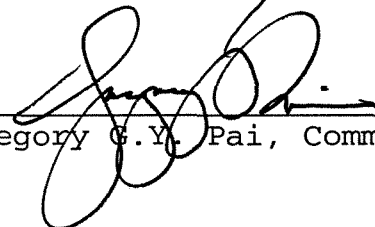
2. Petitioner shall submit a copy of the loan documents for commission and Consumer Advocate review, pursuant to HAR §§ 6-61-101(b)(2) and 6-61-105(c)(2).

3. In accordance with Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189, Petitioner shall file revised tariffs with the commission, pursuant to HAR §§ 6-80-39 and 6-80-40.


DONE at Honolulu, Hawaii this 29th day of November,
2001.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Dennis R. Yamada, Chairman

By 
Gregory G.Y. Pai, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

01-0050.eh


CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19083 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: November 29, 2001